

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 34975 of 2005(L)

PETITIONERS:

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1. SARASWATHI, D/O. SARASSAMMAI,
KUMARARAJA NIVAS, PEROORVILAKOM,
KARUMANOOR DESOM, PARASSALA VILLAGE.
 2. K.V. AYYAPPAN, S/O. KUMARAVEL ASARI,
KUMARARAJA NIVAS, PEROORVILAKOM,
KARUMANOOR DESOM, PARASSALA VILLAGE.

BY ADV. SRI.WILSON URMESE

RESPONDENTS:

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1. MATHEVAN PILLAI, BALAKRISHNA PILLAI
MANAGING PARTNER, JAYAGOPAL CHITTI PVT.LTD.,
KALIYIKKAVILA.
 2. S. KOLAPPAN ASSARI,
S/O. SUBRAHMONYAN ASSARI, WORKING AS
OFFICE SUPERINTENDENT, SECRETARIAT,
THIRUVANANTHAPURAM AND RESIDING AT TC.39/1612,
MANACAUD, THIRUVANANTHAPURAM.
 3. THANKARAJAN NADAR, S/O. NALLATHAMPI
NADAR, REVATHI VILASOM BUNGLOW,
MURYANKARA DESOM, PARASSALA VILLAGE.

(R2 AND R3 DELETED FROM THE PARTY ARRAY
VIDE ORDER DATED 27.1.2006)

4. RAJAYYAN, S/O. YOVA NADAR,
WORKING AS CLERICAL ASSISTANT,
THIRUVANANTHAPURAM AND RESIDING AT
VADALIMOTTAM PUTHEN VEEDU, KARUMANOOR DESOM,
PARASSALA VILLAGE.

BY ADV. SRI.R.GOPAN FOR R1
MR.NAGARAJ NARAYANAN FOR R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29/11/2007, THE COURT ON 07/12/2007 DELIVERED THE
FOLLOWING:

PETITIONERS' EXHIBITS :

EXT.P1 TRUE COPY OF THE ORDER DT.28.10.2005 IN EP NO.24/98
IN ARC NO.24/97

FIRST RESPONDENT'S EXHIBITS :

EXT.R1(a) TRUE COPY OF THE JUDGMENT IN CRP 2766/01
DATED 18.03.2003

EXT.R1(b) TRUE COPY OF THE SALE DEED NO.309/01

TRUE COPY

PA TO JUDGE

K.BALAKRISHNAN NAIR & K.P.BALACHANDRAN, JJ.

Writ Petition (C) No.34975 of 2005-L

Judgment

Balakrishnan Nair, J.

. The point that arises for decision in this Writ Petition, filed under Article 227 of the Constitution of India, is whether the award passed by a Joint Registrar of Chits, Tamil Nadu State, under the provisions of the Chit Funds Act, 1982 (Central Act 40 of 1982) (hereinafter referred to as the Act) can be executed by a civil court in Kerala.

2. The brief facts of the case are the following : The petitioners are judgment debtors 1 and 2 in EP No.24/98 in ARC No.24/97 on the files of the Sub Court, Neyyattinkara. The 1st respondent herein is a foreman, conducting chit business in Tamil Nadu. Petitioners 1 and 2 and others were the subscribers /sureties for the chit amount. Since the subscribers failed to pay the amount due under the chits, the 1st respondent moved the Assistant Registrar of Chits, Marthandam, Tamil Nadu, under the provisions of the Act, by filing ARC No.24/97 and obtained an award in his favour. He filed EP before the Sub Court, Kuzhithurai to execute the said award. When an EP is filed for

execution of the award, by virtue of the provisions of Section 71 of the Act, the same has to be executed in the same manner as a decree of Sub Court. In other words, for the purpose of execution, the award shall be deemed to be a decree of Sub Court, Kuzhithurai. The first respondent moved for transfer of the said decree to Sub Court, Neyyattinkara under Rules 5 and 6 of Order XXI of the CPC. The award was transferred to Sub Court, Neyyattinkara. The first respondent filed EP No.24/98 to execute the award by attachment and sale of the properties of the judgment debtors. But, the judgment debtors raised a preliminary objection that since the Chit Funds Act, 1982 is not enforced in the State of Kerala, the Sub Court, Neyyattinkara has no jurisdiction to execute the award of the Joint Registrar, Marthandam, Tamil Nadu. The said preliminary objection was upheld by the Sub Court and the EP was dismissed, relying on the decision of this Court in **Krishnamoorthy v. Khaleel Rahman** (1996(2) KLT 788). The 1st respondent filed CRP No.2766/01, challenging the said order, before this Court. This Court allowed the CRP by order dated 18.03.2003, holding that the decision in Krishnamoorthy's case (supra) has no application to the facts of the case. The Sub Court was directed to take a fresh decision in the matter, taking note of the contentions of both sides. Pursuant to

the remand, the Sub Court, Neyyattinkara, ignoring the objections raised by the petitioners, ordered to proceed with the sale proceedings by settling the proclamation and taking further steps. The said order is produced as Ext.P1. This Writ Petition was filed, challenging Ext.P1.

3. The learned Single Judge, who heard the Writ Petition, after noticing the contentions and advertent to the decisions cited at the bar, felt that it will be appropriate that the Writ Petition is heard by a Division Bench. The learned Single Judge noticed the probable interpretation of Sub-section (3) of Section 39 CPC and also the decision of this Court in **Sankar Singh v. Secretary, Hosdurg Housing Co-operative Society** (1996(2) KLJ 70). The observation in **Krishnamoorthy's** case (supra) that in the absence of enforcement of the Act in the State of Kerala, the civil courts cannot treat the orders of the Joint Registrar under the Act as a decree of the civil court and they cannot be executed was also adverted to. In the above background of uncertainty of the interpretation to be given to Sub-section (3) of Section 39 CPC, the Writ Petition was referred to the Division Bench.

4. We heard the learned counsel on both sides. The learned counsel for the petitioners submitted that the award of an Arbitrator, passed in the State of

Tamil Nadu, cannot be executed by a Civil Court in Kerala, as the provisions of the Chit Funds Act have not been extended to the State of Kerala. Further, it was submitted that even assuming the award is deemed to be a decree of the Sub Court, Kuzhithurai, the same can be executed by a civil court in Kerala, which has pecuniary as well as territorial jurisdiction in the matter. Since the dispute between the foreman and subscribers of a chit in Tamil Nadu cannot be adjudicated by the Sub Court, Neyyattinkara, the said court is not competent to execute the award, in view of the provisions of Sub-section (3) of Section 39, it is contended. In support of the above submission, the learned counsel for the petitioners relied on the decisions of this Court in **Krishnamoorthy's** and **Sankar Singh's** cases (supra) and also the decision of the Apex Court in **M.V.AL Quamar v. Tsavliris Salvage (International) Ltd** (2000(8) SCC 278). The learned counsel for the respondents, on the other hand, submitted that an award passed by the Arbitrator, when it is filed in a civil court in Tamil Nadu for execution is deemed to be a decree of the said civil court. Once it is transferred from that court to a civil court in Kerala, it should be treated as a decree of the Sub Court, Kuzhithurai, for all practical purposes. So, as per the provisions of the CPC, the decree is executable by

the Sub Court, Neyyattinkara. It is further submitted that the interpretation given to the provisions of Sub-section (3) of Section 39 CPC by the petitioners, is untenable. If that interpretation is accepted, the decree can never be executed by a transferee court as that court will be normally lacking territorial jurisdiction to try the suit in which the decree was passed. The learned counsel for the respondents relied on the following decisions in support of his submissions :

Binod Mills Co. Ltd. v. Suresh Chandra (AIR 1987 SC 1739), **PS Ramamoorthy v. Selvar Paints and Varnish Works Pvt Ltd.** (AIR 1984 Madras 172), **Ramavtar v. Pop Sing Mahadeb Prasad** (AIR 1970 Orissa 36), **Inderchand v. Bansropan** (1947 ILR Patna 307), **Basheer Ahamed v. Padmanabha** (AIR 1953 Mysore 37), **Ranganadham v. Ponnacharamma** (AIR 1942 Patna 128) and **Prem Raj v. Illrd Addl. District Judge** (AIR 1992 Allahabad 332).

5. We have gone through the relevant statutory provisions and also the various decisions cited by both sides. We notice that none of the decisions cited is directly in point. So, we have to take a decision, having regard to the proper construction to be placed on the relevant statutory provisions.

6. The Chit Funds Act, 1982, is a Central Act. Section 1(3) of the said Act enables the Central Government to enforce the Act in different States on different dates. But, so far, no notification has been issued by the Central Government, enforcing the provisions of the said Act in the State of Kerala. If there is any dispute between the Foreman and the subscriber of a chit, the same has to be settled by the Registrar or his nominee in the light of the provisions contained in Chapter XII of the Act. The Registrar or his nominee is authorised to settle the dispute. Against the said decision of the Registrar or his nominee, an appeal will lie to the Government under Section 70 of the Act. The certificate issued by the Registrar, concerning an award shall be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court. The relevant provision is Section 71, which reads as follows :

“Money how recovered :- Every order passed by the Registrar or the nominee under Section 68 or Section 69 and every order passed by the State Government in appeal under Section 70 for payment of any money shall, if not carried out, -

(a) on a certificate issued by the Registrar, be deemed to be a

decree of a civil court and shall be executed in the same manner as a decree of such court, or

(b) be executed in accordance with the provisions of any law for the time being in force for the recovery of amounts as arrears of land revenue;

Provided that no application for execution under clause (b) shall be made after the expiry of three years from the date fixed in the order and if no such date is fixed, from the date of the order.”

The relevant provisions in the CPC are Sections 38, 39 and 40. They are quoted below for reference :

“38. Court by which decree may be executed – A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution.

39. Transfer of decree – (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction -

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business or personally works for

*gain, within the local limits of the jurisdiction of such other Court,
or*

*(b) if such person has no property within the local limits of the
jurisdiction of the Court which passed the decree sufficient to
satisfy such decree and has property within the local limits of the
jurisdiction of such other Court, or*

*(c) if the decree directs the sale or delivery of immovable property
situated outside the local limits of the jurisdiction of the Court
which passed it, or*

*(d) if the Court which passed the decree considers for any other
reason, which it shall record in writing that the decree should be
executed by such other Court.*

*(2) The Court which passed a decree may of its own motion,
send it for execution to any subordinate Court of competent
jurisdiction.*

*(3) For the purposes of this section, a Court shall be deemed to
be a Court of competent jurisdiction if, at the time of making the
application for the transfer of decree to it, such Court would have*

jurisdiction to try the suit in which such decree was passed.

40. Transfer of decree to Court in another State – Where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State.”

7. The dispute involved in this case is regarding the interpretation of the above quoted Section 39. As mentioned earlier, the learned counsel for the petitioners raised mainly, two contentions. The first contention is that as long as the aforementioned Central Act is not extended to the State of Kerala, the decree of the Joint Registrar of Chits, Marthandam, Tamil Nadu, cannot be executed by the Sub Court, Neyyattinkara. But, we are of the view that once the award of the Joint Registrar is filed before the Sub Court, Kuzhithurai, it is deemed to be a decree of the said court, in view of Section 71 quoted above. In view of the said deeming provision, the Sub Court, Kuzhithurai is competent to transfer the decree to a Court in Kerala and the transferee Court is competent to execute the decree. The decision in **Krishnamoorthy's** case (supra), where the award was directly filed before a Court in Kerala, has no application to the facts of this case.

7. The second contention raised by the learned counsel for the petitioners is that even assuming the award transferred by the Sub Court, Kuzhithurai is treated as a decree of that Court, still, the same can be executed only by a Court having jurisdiction to try the suit by virtue of Section 39(3) CPC. But, we notice that the provision, which is applicable to inter-State transfer of decrees for execution is Section 40 CPC. In view of the said Section, a decree sent from another State to this State can be executed in such manner as may be prescribed by the Rules in force in the State. The Rules in force in this State are those contained in Chapter VIII of the Kerala Civil Rules of Practice. Subject to those Rules, a decree transferred from another State shall be executed by the Court in Kerala. So, we are of the view that Section 39 does not apply to inter-State transfer of decrees. In that view of the matter, it is unnecessary for us to consider the controversy regarding the interpretation of Section 39(3) in this case and also the various decisions cited by both sides. None of those decisions, as we found earlier, is directly applicable to the facts of this case. In the result, we find nothing illegal with the decision of the Sub Court, Neyyattinkara. It is true, going by the direction of this Court in CRP No.2766/01, the Sub Court, Neyyattinkara should have

passed a speaking order. Ext.P1 is a bald and cryptic order. But, since the matter was heard at length and we have already rendered a decision regarding the merits of the case, it is unnecessary to remit the matter to the Sub Court, Neyyattinkara for passing a speaking order. In the result, the challenge against Ext.P1 fails and the Writ Petition is dismissed. Since there was already a stay in this case, we direct the parties to appear before the Sub Court, Neyyattinkara for further proceedings on 19.12.2007.

K.BALAKRISHNAN NAIR,JUDGE

0712.2007

K.P.BALACHANDRAN, JUDGE

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